IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/12/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.20851 OF 2003
AND
CRL.M.P.No.5947 OF 2003.

1.Chinnathurai
2.Ezhumalai ... Petitioners

-Vs-

Sankar ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

!For petitioners : Mr.S.Saravanakumar

^For respondent : Mr.R.Singaravelu

:O R D E R

The above criminal original petition has been filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to Crl.M.P.No.321 of 2003 from the file of the Court of Judicial Magistrate, Sankarapuram, Villupuram District and quash the same.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the respondent herein has lodged a private complaint as against the petitioners/A1 and A2 and ten others before the Court of Judicial Magistrate, Sankarapuram for the offences punishable under Sections 147,148,294,3 23,324 and 506(II) IPC and the said Court has taken it on file in Crl.M.P.No.321 of 2003. At this stage, the petitioners/A.1 and A.2 have come forward to file the above criminal original petition on averments such as that the respondent has already lodged a complaint dated 6.8.2002 before the Vadaponparappi Police Station not only against the petitioners but also against 14 others for the offences punishable under Sections 147,148,294,324,323 and 506(II) IPC and the said police also, after thorough investigation have filed a charge-sheet before the Court below as against the petitioners/A.1 and A.2 alone thereby referring the matter as mistake of regarding the other accused, A.3 to A.16 and the said charge-sheet having been taken on file by the Court below, is pending trial; that at this stage, the respondent herein has again filed the private complaint for the same occurrence alleged thereby impleading 12

accused persons, which the Court below has taken on file and issued summons to the accused including the petitioners; that the Vadaponparappi police having conducted the investigation in the earlier complaint, have filed the charge-sheet under Section 173(2) Cr.P.C., referring the case as mistake of fact as against A.3 to A.16 and the learned Magistrate has also passed the orders and therefore the learned Magistrate cannot entertain the second complaint for the same occurrence and the sae is not maintainable; that the accused cannot be punished twice for the same occurrence particularly the petitioners who are accused in C.C.No.220/2003 and also in the private complaint filed in Crl.M.P.No.321 of 2003 in connection with the occurrence dated 6.8.2002. On such grounds, the petitioners would pray for the relief extracted supra.

3. During arguments, the learned counsel appearing on behalf of the petitioner would only reiterate what has already been traced in the above original petition without any new fact or circumstance or law having been brought forth. On the contrary, on the part of the learned counsel for the respondent, he would submit that since the complaint lodged by the respondent with the Vadaponparappi Police in Cr.No.22 6/2002 was referred as mistake of fact in respect of A.3 to A.16 therein without proper reasons, the respondent has filed the private complaint before the Court below and thus there is no illegality and would pray to dismiss the above criminal original petition.

4. The case of the petitioners is that for one and the same occurrence, a case has been registered by Vadaponparappi Police in their Crime No.226/2002 for the offences punishable under Sections 147,148,294 ,324,323 and 506(II) IPC and a charge-sheet has also been filed against the petitioners alone while referring the case against the other accused therein by the said police and the same having been taken on file by the jurisdiction Court, the Court of the Judicial Magistrate, Sankarapuram, for its consideration on trial. Again on a private complaint filed against 12 of the 16 accused cited in the earlier complaint, which includes the first and second accused therein also, who are none other than the petitioners herein, against whom the chargesheet has been laid, whether a private complaint filed against them also as the first and second accused could be entertained by the same Magistrate in his Crl.M.P.No.321 of 2003 for a second time for one and the same occurrence is the point that is to be decided on the legal parameters.

5. It is not only mandated under Article 20(2) of the Constitution of India that no one could be either tried or punished twice for one and the same offence but the same is also embodied in the Code of Criminal Procedure and therefore in view of the charge-sheet laid in C. C.No.220 of 2003 pertaining to Cr.No.226/2002 on investigation by the jurisdiction police, which is also alleged to have been taken on file by the jurisdiction Magistrate against the petitioners, no second complaint on the same subject could be either entertained or proceeded with for any purpose and the same becomes liable only to be quashed as against the petitioners alone and the same is ordered accordingly.

In result,
(i)the above criminal original petition succeeds and the same is allowed.

(ii)The private complaint taken on file in Crl.M.P.No.321 of 2003 by the Court of Judicial Magistrate, Sankarapuram, is quashed insofar as the petitioners are concerned.

Consequently, Crl.M.P.No.5947 of 2003 is closed.

Index: Yes
Internet: Yes

Rao

To

1.The Judicial Magistrate,
Sankarapuram,
Villupuram District.

2.The Station House Officer,
Vadaponparappi Police Station,
Villupuram District.